

MINUTES OF THE ZONING BOARD OF APPEALS
TOWN OF ANDOVER, MASSACHUSETTS

Memorial Hall Library, Elm Sq., Andover

August 2, 2007

APPROVED 9-6-07

There were present: Anderson, McDonough, Reilly, Jeton, Batchelder and Brown. Meeting opened at 7:03 p.m. Jeton arrived at 7:08 p.m.

PETITION NO. 3716

PETITIONER: Terravert LLC

PREMISES AFFECTED: 65 Cheever Circle

MEMBERS: Anderson, McDonough, Reilly, Jeton, Batchelder and Brown

There was a request to continue to September. McDonough made a motion to continue the hearing to September. Batchelder seconded the motion & the Board voted unanimously to continue to September.

PETITION NO. 3717

PETITIONER: Black

PREMISES AFFECTED: 153 Summer St.

MEMBERS: McDonough, Reilly, Jeton, Batchelder and Brown

Scott & Florence Black represented themselves in their request for a variance or special permit to construct an enclosed entryway & stairs that will not meet the front setback requirement. The Blacks submitted photos of the existing entry as well as neighboring houses. The Board noted that it is similarly situated on the lot as abutting houses & that most of the other neighboring properties have open porches. The requested relief is 4' encroachment into setback. McDonough made a motion to close the public hearing. Batchelder seconded the motion & the Board voted unanimously to close the hearing. McDonough made a motion to approve a variance. Batchelder seconded the motion. Jeton asked for the hardship. Brown noted that the house is non-conforming. The Board voted (5-0) to grant a variance. Reilly will write the decision.

PETITION NO. 3714

PETITIONER: Ristuccia

PREMISES AFFECTED: 88 Central St.

MEMBERS: McDonough, Reilly, Jeton, Batchelder and Brown

This is a continued public hearing. McDonough explained that the Board had closed the hearing, which she chaired, & begun deliberations, which was continued to tonight. She had studied the materials submitted and felt that there is not sufficient evidence as outlined in the by law to act favorably on this application for a dimensional special permit for historic preservation. The specific findings are not present (demolition in the absence of the special permit). McDonough suggested asking the petitioner to provide evidence. Anderson reminded McDonough that they need a motion to re-open & continue the hearing & to notify abutters. Batchelder made a motion to re-open the public hearing. Jeton seconded the motion & the Board voted (5-0) to reopen the hearing. Attorney Johnson assented to an extension & will pay for the re-advertising.

PETITION NO. 3718

PETITIONER: Stafford

PREMISES AFFECTED: 37-41 Lowell St.

MEMBERS: Anderson, McDonough, Jeton, Reilly, Batchelder and Brown

Attorney Daniel Hayes Jr. represented the Petitioner, Elisabeth Stafford, in her request to subdivide a 1.826-acre lot with two houses on it. #41 Lowell St. would not meet minimum area or frontage, as proposed. Neighbors have voiced support for the proposed subdivision. Anderson pointed out that the zoning district boundary (SRA & SRB) bisects the lot. He asked how it is that two houses were built on the same lot. Hayes explained that one house was built in 1890 & the other in 1910 & that it wasn't uncommon at the time to have two houses on one lot. The proposal has two-dimensional issues: insufficient frontage on both lots and the area of lot 80A. Hayes added that the existing setbacks of #41 Lowell St. are non-conforming. Anderson asked why the smaller lot isn't proposed at 30,000 sq. ft. Hayes stated that it is his client's request as presented. Beth Schumacher, rear abutter on Stafford Ln., spoke in favor of the proposal. Joy Stafford Evans, 35 Lowell St. & Petitioner's daughter, spoke in support explaining that her mother is doing this to gain some financial stability & that a further subdivision is unlikely in the future. Norm Frost, 31 Lowell St., spoke in support. The Board decided not to view the premises. Jeton cautioned the public about future subdivision, explaining the requirements for a cul-de-sac & further subdivision. She added that the only way to preclude this would be to reconfigure the current proposal so that the new lot line would be further over. Jeton added that she didn't want to mislead neighbors about a further subdivision. Anderson suggested placing a condition restricting further subdivision for 5, 10 or 15 years. Jeton suggested an even longer restriction. Brown made a motion to close the hearing. Jeton seconded the motion & the Board voted unanimously to close the hearing. Jeton stated that there is no hardship & there are no legal grounds to grant a variance. Anderson commented that the proposed subdivision would eliminate the non-conformity of having two houses on one lot & that the trade-off would be the creation of a smaller, non-conforming lot. Brown agreed with Anderson, but is uncomfortable with creating a lot with insufficient frontage. He suggested a plan that would have only one of the new lots with insufficient frontage. The Board discussed the possibility of one lot with conforming frontage & whether that would leave enough frontage for a right of way. Jeton explained that a minimum of 40' is required for a right of way. Therefore, it wouldn't be enough. Anderson suggested that the proposal could have one lot with insufficient frontage. Since the hearing is closed, Petitioner can withdraw without prejudice or ask to re-open the hearing. McDonough made a motion to re-open the hearing. Brown seconded the motion & the Board voted unanimously to re-open the hearing. Anderson asked Petitioner's counsel to submit a new plan for the 9/6/07 meeting. Jeton cautioned them about the zoning district boundary going through the property.

PETITION NO. 3719

PETITIONER: Wolf

PREMISES AFFECTED: 8 Paulornette Circle

MEMBERS: Anderson, McDonough, Jeton, Reilly, Batchelder and Brown

Wayne Bozemen, contractor, represented the Petitioner's request to construct a 3-season porch that would not meet the rear setback. Bozeman explained that the house is situated on the lot at a 45-degree angle & that there is a slope in the rear. Any alternate location would make a strange porch. Jeton asked about the topography of the lot. The Board discussed the option of an alternate location, including off the existing garage. Bozemen argued that it wouldn't be feasible due to the existing layout of the house. The Board decided not to view the premises. McDonough made a motion to close the hearing. Reilly seconded the motion. McDonough sat off. The Board voted (5-0) to close the hearing. Brown would like to see elevations, stating that it would be a hardship to push it into the hill. Bozemen commented that it is not in the hill. Anderson reminded him that the hearing is closed. Reilly has no problem with a variance due to shape, topography & citing of house on the lot. Anderson agreed. Reilly made a motion to grant the variance requested. Jeton seconded the motion & the Board voted (4-1), Brown opposed, to grant the variance. Jeton will write the decision.

PETITION NO. 3720

PETITIONER: Landesman & Dalton

PREMISES AFFECTED: 8 Avon St.

MEMBERS: Anderson, McDonough, Jeton, Reilly, Batchelder and Brown

Attorney Mark Johnson represented the Petitioners in their request to construct a side porch & front stairs & to reconstruct existing side stairs that will not meet front setback. Petitioners were previously approved for a similar project. The current proposal will be further back from street than prior approval. The additions will meet side setback requirements. It will not be any closer to street than the existing house. Anderson asked Johnson if they would submit a letter refusing prior approval, if the current proposal is approved. Johnson agreed. Jeton made a motion to close the hearing. Reilly seconded the motion & the Board voted (5-0) to close the hearing. Brown sat off. Batchelder made a motion to grant a special permit. Reilly seconded the motion & the Board voted (5-0) to grant the special permit. Batchelder will write the decision.

PETITION NO. 3722

PETITIONER: Condylne LLC

PREMISES AFFECTED: 160 Dascomb Road

MEMBERS: Anderson, McDonough, Jeton, Reilly, Batchelder and Brown

Attorney Mark Johnson represented the Petitioner in their request to construct an addition and parking that will not meet dimensional requirements, landscape requirements or parking requirements. The existing building is accessed by Smith Drive. This is a private way. Much of the relief requested is contingent upon whether the Board considers the frontage to be on Smith Drive or Dascomb Road. Johnson stated that Inspector of Buildings, Kaija Gilmore, feels frontage is along Dascomb Rd. The property is located in two zoning districts and two towns: the parking is in Tewksbury, while the building is in Andover. The proposed addition is one story & the proposed setback to Smith Drive is conforming. The existing setback is 77' +/-, while 100' is required. Anderson asked Johnson to summarize the relief requested. Johnson explained each section listed in the application & the reason relief was requested. Bernie Paquin, engineer with Dana Perkins, assisted in clarifying the requested relief as well as familiarizing the Board with the site. The proposed addition will include 8 loading docks, driveways, parking, & landscaping/screening. Anderson asked if the submitted plan depicts each proposed feature & the relief requested. Johnson stated that it does not, but offered to provide an annotated plan. Anderson asked for an annotated plan for the September meeting. Johnson agreed. Brown asked for the Board's feeling on whether frontage is on Dascomb Road or Smith Drive. The Board agreed that it is on Dascomb Road. Brown asked if the easement could be considered frontage. Paquin explained that it is a roadway easement. Johnson added that it is not a subdivision road. Anderson asked for verification that Smith Drive is not sufficient frontage, that Dascomb is the frontage & to submit a plan depicting the relief based on Dascomb as the frontage, and a proposed motion. McDonough made a motion to continue to September meeting. Brown seconded the motion & the Board voted (6-0) to continue to the September meeting. Jeton suggested that the property is zoned ID, but it acts as IA.

PETITION NO. 3721

PETITIONER: Edward Julian Realty Trust

PREMISES AFFECTED: 321, 323, 325 Lowell Street

MEMBERS: Anderson (Chair), Jeton, Reilly (Acting Clerk), Batchelder and Brown

Attorney Daniel Hayes, Jr. & Stephen Stapinski represented the petitioner in their request to construct two fast-food restaurants with drive-through windows. Attorney Hayes, Jr. gave an overview of the requested relief. Stapinski gave an overview of the zoning district's permitted uses, emphasizing that 'adult use' & office buildings are allowed in the Limited Service District. They have met with Planning staff regarding the possibility of a sit-down restaurant. According to Stapinski, Planning staff suggested a small, family oriented restaurant that wouldn't include 'adult use' in the future. There would be two buildings with three tenants with contracts of up to 40 years with an extension option. One building would be parallel to the Rt. 93 on-ramp while the other would be closer to Lowell Street. The site is on town sewer & water. Stapinski informed the Board that Dermot Kelly of DJK determined, using the existing traffic study relative to access without signals conducted for the Windsor Green Apartments comprehensive permit, that the current proposal would not exceed the projections set forth in the study. The Petitioner did not have the report available. Stapinski explained the variance for landscape setbacks emphasizing that it will

be enhanced between the abutting residential properties. Fencing would buffer the residential properties as well the site being higher than the residential properties. Anderson asked if a use variance is required for both buildings. Hayes stated that a special permit is required for sit-down restaurant. Jeton added that a variance is required for fast food and drive-through. Anderson pointed out that a special permit is required for sit-down in the LS District & that fast food / drive-through is prohibited. Hayes argued that the 1969 eminent domain taking of frontage for Route 93 created a hardship. Anderson asked Hayes if the taking predated the establishment of the LS District & sit-down restaurant. Hayes admitted that the taking did predate these by law changes. Anderson asked then how the taking creates a hardship for restrictions that came after it. Hayes explained that when it was rezoned LS/Adult it inhibited the development of the site. Anderson asked why the Petitioner hasn't requested a special permit for the sit-down use, commenting that the site is already traffic intensive & that fast-food traffic is different than sit-down restaurant. Hayes explained that the fast-food use is proposed to avoid the adult use. Jeton pointed out that the adult use is not allowed as a matter of right, but that it would require a public hearing. Hayes argued that the economic feasibility after the taking is difficult & that parking is an issue. Anderson offered that a national sit-down restaurant is a possibility and that the by-law works with a sit-down use. There has been no credible effort to comply with the by-law, no marketing study, no evidence of any offers to buy. Stapinski informed the Board that fast food wasn't the original plan and that they had met with Town staff several times. Anderson reminded the Petitioner that a variance is the most difficult relief & that what has been discussed with Town staff is not of use, unless comments are made in writing or in person. Stapinski stated that they might come back with a different proposal. Anderson informed the Petitioner that if they stay with the current proposal, more evidence, including traffic study, is required to justify a use variance. The Board then asked for public comments. Anderson disclosed that his daughter plays field hockey with Deidre Donahue's daughter and that he felt there is no conflict. No one objected. Attorney Deidre Donahue, resident at 7 Fairway Dr., stated that she is representing neighborhood concerns but is unpaid. She also disclosed that she was formerly associated with Town Counsel Tom Urbelis. Donahue explained that the LS District has 12 uses allowed as right and 26 by special permit (adult use is one of the 26). She emphasized that drive-throughs are prohibited, the argument for a variance hasn't been heard and traffic is an existing issue. Attorney Michael Rosen, resident at 48 Wild Rose Dr., spoke on his own behalf. He presented a petition in opposition to the proposed restaurants, reiterating that a hardship is required as well as evidence of no substantial hardship hasn't been presented. Attorney Robert Lavoie, representing Criterion Development (owners of abutting Windsor Green Apts. Immediately behind the site + the single family dwelling immediately next to the proposed restaurants). His clients are concerned with noise, lighting, smells, and trash/dumpsters that would emanate from the restaurants. Lavoie asked the Board to consider the abutters at Windsor Green, noting that the intent of the By Law that a variance be granted only if it doesn't nullify or derogate from intent and that zoning districts are meant to separate uses. Anderson asked Lavoie if Criterion would agree to any particular uses. Lavoie suggested compatible uses, possibly a sit-down restaurant. Sarah Morissette, 130 Lovejoy Rd., voiced concern over the potential change in the character of the neighborhood. Attorney Hayes asked the Board to continue the hearing to the September 6th meeting stating that they may file for a sit-down restaurant. Anderson suggested that it might be cleaner to file a new application if for sit-down. Hayes agreed to file a new application. Reilly made a motion to continue to the 9/6/07 meeting. Batchelder seconded the motion & the Board voted (3-2) (Brown & Jeton opposed) to continue to 9/6/07. Jeton explained that she is prepared to close the hearing & hear what the Board thinks. She added that it's not appropriate to invite consideration of a sit-down; Petitioners could have a day care by right. Brown agreed with Jeton. Anderson clarified that the petitioner hasn't finished the presentation on the current proposal and that a lot of additional information is needed. Anderson asked for a revote on the continuance. The Board voted (3-2) (Brown & Jeton opposed) to continue to 8/6/07.

PETITION NO. 3710

PETITIONER: Andover Village Associates

PREMISES AFFECTED: 429-431 S. Main Street

MEMBERS: Anderson (Chair), McDonough (Clerk), Jeton, Reilly and Brown

This is a continued public hearing. The Board discussed the following issues:

1. 39 years in condition #1 (page 7) is acceptable to him & his lending institution.
 - a. Anderson explained that 30 years is the time for depreciation of an asset
 - b. Perkins asked for it to commence upon issuance of the Certificate of Occupancy
2. Specific limits on the size of the building. The basement was not previously discussed for storage, which if allowed, would reduce deliveries & overall footprint of the building).
 - a. Perkins suggested adding to Condition #6 regarding the 5500 sq. ft. limitation on the gross floor area: "...not including basement, crawl space, etc.
 - b. Brown suggested restricting basement use for storage. Perkins reminded the Board that he wants some flexibility. Anderson suggested Condition #6 to read, in part, "... not including basement or crawl space, used for storage and utilities only..." This area would not count towards gross floor space.
 - c. Condition #16 related to square footage of office space. McDonough proposed 600 sq. ft. total so as not to create a mixed use in the future. Perkins stated that 600 sq. ft. *per* office is acceptable. He currently has 1000 sq. ft. and plans on locating his office in the proposed building. Mrs. Perkins emphasized the importance of having an owner/operator on site. Brown suggested a reduction in the square footage to prevent rental office space. McDonough pointed out that the language in the draft "...and its affiliates..." covers any other businesses from renting office space. Perkins cautioned the Board that he didn't want further restrictions on basement & 1st floor area, but that a 3500 sq. ft. footprint is acceptable.
 - d. Condition #10 relative to the threshold from store to restaurant – Jeton reminded the Board of the Inspector of Building's concern over restaurant use. Perkins emphasized that he asked for take-out food service. The Board also discussed alcohol sales & on-site ATM, neither of which Perkins wants to be restricted.
 - e. Condition #18 – signage limitations – Brown suggested using the Mixed Use District guidelines. Anderson stated that Petitioner might have to come back for signage.

Reilly made a motion to close the public hearing. McDonough seconded the motion & the Board voted (5-0) to close the hearing. Reilly made a motion to approve the draft decision as written & amended tonight. The Board voted (5-0) to approve as written & amended tonight.

Reilly made a motion to approve the 7/11/07 minutes. Jeton seconded the motion & the Board voted (5-0) to approve the 7/11/07 minutes.

Meeting adjourned at 10:03 p.m.